

FILED

FOR PUBLICATION

FEB 13 2009

UNITED STATES COURT OF APPEALS

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

**BETTY DUKES; PATRICIA
SURGESON; CLEO PAGE;
DEBORAH GUNTER; KAREN
WILLIAMSON; CHRISTINE
KWAPNOSKI; EDITH ARANA,**

Plaintiffs - Appellees,

v.

WAL-MART, INC.,

Defendant - Appellant.

No. 04-16688

D.C. No. CV-01-02252-MJJ

ORDER

**BETTY DUKES; PATRICIA
SURGESON; CLEO PAGE;
DEBORAH GUNTER; KAREN
WILLIAMSON; CHRISTINE
KWAPNOSKI; EDITH ARANA,**

Plaintiffs - Appellants,

WAL-MART, INC.,

Defendant - Appellee.

No. 04-16720

D.C. No. CV-01-02252-MJJ

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judges McKeown, Rawlinson and Bybee did not participate in the deliberations or vote in this case.